

memorandum

DATE: September 3, 1992

REPLY TO
ATTN OF: EH-31.1

SUBJECT: Department of Energy (DOE) and Department of Labor (DOL) Memorandum of Understanding (MOU)

TO: Program Secretarial Officers

On August 10, 1992, Secretary Watkins and Secretary of Labor Lynn Martin signed an MOU (attached) to establish an ongoing relationship with DOL designed to strengthen the occupational safety and health (OSH) programs at DOE facilities. This MOU, effective immediately, formalizes one of the Secretary's key initiatives in the area of worker safety.

Specifically, the MOU provides Program Secretarial Officers (PSOs) and the field immediate access to the Occupational Safety and Health Administration's (OSHA) expertise and network of OSH-related technical and scientific information. It also enables DOE to obtain feedback from OSHA on the status and adequacy of the Department's OSH programs. Further, the MOU encourages consistency between DOE and DOL OSH programs and establishes a mechanism for the conduct of joint DOE-DOL programs related to OSH training, model program development and technical assistance.

In 1974, the DOL, through correspondence with the Atomic Energy Commission (AEC), recognized that the AEC had the statutory authority over the occupational safety and health of contractors and employees at DOE Government-Owned or -Leased Contractor-Operated (GOCO) facilities. This MOU reaffirms that authority, and clarifies DOE's jurisdiction over new construction of GOCO facilities and contractor employee allegations of discrimination or reprisal relating to OSH issues. It will help avoid the confusion that DOE experienced in the past regarding DOL jurisdiction at certain DOE GOCO facilities.

Under the provisions of the MOU, when the need for consultative assistance from DOL (OSHA) occurs, DOE may request such assistance, in writing, together with an estimate of the required resources and, if possible, a list of projected activities. Requests that involve a commitment of resources will require a specific Interagency Agreement between the parties, which covers the scope of work, timing and reimbursement.

I encourage you and your field organizations to utilize this MOU to strengthen your respective OSH programs. Under the terms of the MOU, the Office of Safety and Quality Assurance (EH-30) will serve as the liaison between DOE and DOL (OSHA). As such, proposed requests for assistance need to be coordinated through that Office. We believe this cooperative

agreement will greatly enhance DOE-wide efforts to improve the OSH programs at our facilities.

Specific questions regarding the MOU can be directed to Dennis Lubow (EH-31.1) on (301) 903-2075.



Paul L. Ziemer, Ph.D.
Assistant Secretary
Environment, Safety and Health

Attachment

cc:
DOE Field Office Managers

MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. DEPARTMENT OF LABOR
AND
THE U.S. DEPARTMENT OF ENERGY

I. Purpose:

The purpose of this agreement is to formalize the working relationship between the U.S. Department of Energy (DOE) and the U.S. Department of Labor (DOL) and to delineate the authority of DOE for occupational safety and health of contractor employees at DOE Government-Owned or -Leased Contractor-Operated (GOCO) facilities. Both parties agree that requests for technical assistance and/or consultation which involve a commitment of resources will require a specific Interagency Agreement between the parties covering the scope of work, timing and reimbursement.

This agreement is consistent with and is entered into under the following statutory authorities: Section 161 (f) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201 (f)); Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256); the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et. seq.), and the Economy Act, as amended (31 U.S.C. 1535).

Executive Order 12344, enacted into law by P.L. 98-525, establishes the responsibilities of the Director, Naval Nuclear Propulsion Program, (who is also the Deputy Assistant Secretary for Naval Reactors within the DOE) over all facilities and activities which comprise the Program, a joint Department of the Navy-Department of Energy organization. These executive and legislative actions establish that the Director is responsible for all matters pertaining to naval nuclear propulsion, including direction and oversight of environment, safety, and health matters for all program facilities and activities related to the Nuclear Propulsion Program. The provisions of this Memorandum of Understanding do not apply to the Naval Nuclear Propulsion Program.

II. Background:

The DOE, which was established in 1977 by the Department of Energy Organization Act, is responsible for the coordination and administration of a wide variety of diverse functions related to the Nation's energy and national security needs. This 1977 Act transferred to DOE all of the responsibilities of the Energy Research and Development Administration, the Federal Energy Administration, the Federal Power Commission, the Power Administrations, and functional components of the Department of Housing and Urban Development, the Department of the Navy, the Department of the Interior, and the Interstate Commerce Commission.

The DOL exercises regulatory authority relating to the occupational safety and health of all private sector workers through the Occupational Safety and Health Act of 1970 (OSH Act). Section 4(b)(1) of the OSH Act exempts working conditions of certain non-Federal employees from the provisions of the OSH Act to the extent that other Federal agencies exercise statutory authority to prescribe or enforce occupational safety and health standards or regulations affecting these conditions. DOE is one of these agencies, because DOE, pursuant to its authority under the Atomic Energy Act of 1954, establishes and enforces occupational safety and health standards for the working conditions of contractor employees at its GOCO facilities.

In order to improve DOE occupational safety and health programs at its GOCO facilities, in 1990, DOE asked DOL to utilize the Occupational Safety and Health Administration (OSHA) to conduct an evaluation of DOE's monitoring of contractor occupational safety and health programs. On January 9, 1991, DOL presented to the Secretary of Energy a report which made a number of recommendations designed to strengthen DOE's enforcement, line management and accountability for occupational safety and health programs. In the report, DOL (OSHA) also offered to provide DOE technical assistance and support. On March 20, 1991, in a letter to the Secretary of Labor, the Secretary of Energy accepted DOL's offer of assistance and requested that a Memorandum of Understanding (MOU) be drafted between the two Departments.

III. Approach:

While both parties intend that the agreement be reciprocal, that is, technical assistance may flow from either party to the other, DOE recognizes that from time to time it may need consultative assistance from DOL (OSHA). When this occurs, DOE would request such technical assistance in writing, together with an estimate of the resources that will be required. Where possible, DOE will develop a list of projected activities. To the extent priorities and resources permit, and assuming that DOE reimburses DOL (OSHA) for its costs, DOL (OSHA) will respond to the DOE request, and vice versa. Both parties agree that requests involving a commitment of resources will require a specific Interagency Agreement. The Interagency Agreement will list

requests and resources required to address the request. Nothing in this agreement will relieve DOE of its responsibility for the safety and health of employees. Any safety and health program documentation developed with OSHA input remains the sole responsibility of DOE.

IV. Scope:

- A. Training Support: The parties agree that, where practical, they will collaborate on mutually beneficial occupational safety and health training programs and that they will have the opportunity to attend and participate in each other's training courses and on-the-job training. Where feasible, and if resources are available, DOL (OSHA) will provide technical assistance and consultation to DOE in the establishment of its occupational safety and health training programs.
- B. Information Exchange: The parties agree that, where feasible and where resources permit, they will provide access to each other's technical data, information systems, and libraries. DOL (OSHA) agrees to provide DOE with access to the OSHA Computerized Information System (OCIS) under the terms of a separate agreement.
- C. Program Evaluations: The parties agree that, with mutual consent and where resources permit, DOL (OSHA) will conduct onsite visits to DOE Headquarters, Field Offices, and GOCO facilities for the purpose of making performance type reviews of DOE's occupational safety and health programs for GOCO facilities. This activity will include reviews of DOE and contractor written programs; safety and health inspection programs; and the adequacy of resource, training, and management controls. An Interagency Agreement will be developed when program evaluations are requested. These evaluations, based on criteria in OSHA's Safety and Health Management Guidelines (FR, Vol. 54, No. 16, Thurs., Jan. 26, 1989), will measure DOE's progress in establishing a comprehensive safety and health program for its GOCO facilities. In furtherance of this item, DOE agrees to expedite security clearances for DOL (OSHA) evaluation staff. DOE further agrees to assist DOL (OSHA) in the conduct of these evaluations, to provide right-of-entry without unreasonable delay, and to make the personnel, documents and records available which are necessary to conduct these reviews.
- D. Federal Employees: The parties agree that DOE's Federal employees are covered under Executive Order 12196; that DOE must furnish these employees with a safe and healthful workplace; that DOE must comply with all relevant OSHA standards, including 29 CFR 1960;

and that, consistent with its responsibilities under the Executive Order, OSHA is authorized to make announced and unannounced inspections and to evaluate or investigate complaints arising from or relating to Federal employees at DOE facilities.

Note: Under the provisions of Executive Order 12196, dated February 26, 1980, all Federal Agencies are required to maintain safe and healthful working conditions for their employees. The Order further requires that agencies must comply with existing OSHA standards.

- E. Consultation: The parties agree to consult with one another with respect to major occupational safety and health program issues. These requests and the resources required to address them will be set forth under a separate Interagency Agreement. Examples of some areas that might be covered include compliance programs, occupational safety and health standards, OSHA regulatory interpretations, program development, variances, reprisal protection programs, OSHA enforcement, workshops, and special projects. For example, in support of DOE's effort in revising its injury and illness recordkeeping and reporting system for its GOCO facilities to be in line with the OSHA/Bureau of Labor Statistics guidelines, DOL (OSHA) could provide technical assistance and consultation to help DOE develop policy guidance and guidance for field audits.
- F. Personnel Exchange: The parties agree to provide opportunities for the temporary interagency reassignment of personnel, wherever it is mutually beneficial. These temporary interagency reassignments, details, and transfers of personnel will be arranged between DOE and DOL (OSHA). For example, DOE may provide DOL (OSHA's Office of Federal Agency-Programs) personnel to perform evaluations of non-DOE Federal agency safety and health programs. Likewise, DOL (OSHA) could provide personnel to assist in special DOE projects, such as hazardous waste management or vehicle safety, at one or more of DOE's Field Offices or GOCO facilities. DOE would fully fund these exchanges of such personnel, subject to the availability of funds, when such exchanges were for the purpose of enhancing DOE's occupational safety and health program.
- G. Jurisdictional Issues: DOE exercises statutory authority under the Atomic Energy Act of 1954, and subsequent Federal laws for the occupational safety and health of contractor employees at its GOCO facilities through legally enforceable provisions requiring contractors to comply with DOE requirements for occupational safety and health. These requirements are contained in DOE orders which require DOE contractors operating GOCO facilities to comply with applicable OSHA standards as well as additional safety and health requirements which DOE has adopted. Section 4(b)(1) of the OSH Act renders the Act inapplicable, as a matter of law, to working conditions of contractor employees at DOE GOCO facilities

for which DOE exercises its statutory authority, pursuant to the Atomic Energy Act of 1954, to establish and enforce occupational safety and health standards.

The parties agree that with respect to working conditions of contractor employees at listed GOCO facilities, the provisions of the OSH Act do not apply. DOE will furnish DOL (OSHA) with a current list of GOCO facilities for which DOE exercises its statutory authority to establish and enforce occupational safety and health standards. This list will be sent to OSHA's Office of Federal Agency Programs at least semiannually, or more often if necessary.

The parties agree that DOE's statutory authority extends to construction, including new construction of GOCO facilities when placed on the GOCO list provided to DOL.

Further, DOE and DOL (OSHA) acknowledge that DOE also has jurisdiction over allegations by contractor employees of discrimination or reprisal for filing reports of unsafe or unhealthful working conditions, or otherwise participating in occupational safety and health activities, when DOE has jurisdiction over the underlying occupational safety and health condition which gave rise to the alleged discrimination or reprisal. Each party agrees to review all such allegations of discrimination or reprisal received by that agency to determine whether the allegation is properly within the jurisdiction of the recipient agency, and to refer all allegations not properly within the recipient agency's jurisdiction to the other party for appropriate action. In addition, the parties recognize that the procedures contained in 29 CFR Part 24, "Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes," may require DOL to investigate and adjudicate complaints filed by contractor employees at listed GOCO sites in certain situations.

V. Working Arrangements:

- A. Reimbursement: Reimbursement will be addressed in specific interagency agreements.
- B. Interagency Coordination: The DOE Assistant Secretary for Environment, Safety and Health and the DOL Assistant Secretary for Occupational Safety and Health, or their designees, will meet semiannually to review the effectiveness of this document.

- C. Administration: This agreement will be administered on behalf of DOE by the Office of Safety and Quality Assurance (EH-30) and on behalf of DOL (OSHA) by the Office of Federal Agency Programs (OFAP). Both parties agree that all formal contacts between DOE Federal Offices and contractors and DOL (OSHA) will be routed through these single liaison offices. Also, both parties agree to refer all requests, that were not properly routed, back to the other's respective office. For example, all DOE contractor or Federal office requests to OSHA for standards interpretations will be routed to EH-30. EH-30 will respond to the requests, seeking any necessary assistance from OSHA. OSHA will respond, subject to the resources allocated for this purpose in the Interagency Agreement.


Normal daily working contacts with DOE will be with the office director designated for a specific program, or by other such representative(s) as the parties shall designate by written notice from the EH-30 Office. Administration on behalf of DOL (OSHA) will be through OFAP or by other such representative(s) as shall be designated in writing by DOL (OSHA) to DOE. OFAP and EH-30 will be points of contact for requests for assistance requiring a commitment of resources. However, OSHA's Directorate of Policy will be the point of contact for all 4(b)(1) jurisdictional questions.

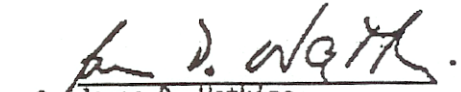
- VI. Effective Date, Amendment, and Termination: This agreement shall become effective when signed by both parties. It may be modified or amended by written agreement between the parties. Such amendments shall become part of, and shall be attached to, this agreement. This agreement shall remain effective until terminated by either party upon 30 days written notice to the other, or for a period of five (5) years from the date of signature of the last signing party. At the end of the time period, the parties agree to review the MOU and make a decision on whether to renew/revise and reissue or terminate the MOU.

The following signatures constitute acceptance of this agreement by the Department of Energy and the Department of Labor:

U.S. Department of Labor


U.S. Department of Energy



Lynn Martin
Secretary of Labor


James D. Watkins
Admiral, U.S. Navy (Retired)
Secretary of Energy

Date: July 29, 1992

Date: August 10, 1992


Dorothy L. Strunk
Acting Assistant Secretary
Occupational Safety and Health
Administration


Paul L. Ziemer, Ph.D.
Assistant Secretary
Environment, Safety and
Health

JUL 29 1992
Date: _____

Date: 7/29/92